No. 94-297

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

Supreme Court, U.S.
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BRIAN PURICELLI,

Petitioner,

VS.

BOROUGH OF MORRISVILLE; HARRY MERKER; TOWNSHIP OF WRIGHTSTOWN; WALTER J. HUGHES JR.; KEN CRONLUND, GEORGE DONAT; YARDLEY BOROUGH, SUSAN TAYLOR, EDWARD ROBINSON, THE COUNTY OF BUCKS, OFFICE OF DISTRICT ATTORNEY, ALAN RUBENSTEIN, DALE REICHLEY; WILLIAM BROSHA and DAVID ARMITAGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that petitioner's issues numbered one through seven in his Issues Presented were not properly set forth in his appellate brief where he attempted to raise them by way of incorporation and thereby circumvent the 50 page brief limit of F.R.A.P. 28(g)?

2. Whether Puricelli's due process claim arising against the Borough of Morrisville remains viable where he failed to raise this claim before the court of appeals or this Honorable Court?

3. If preserved, whether Puricelli failed to establish a due process claim since he did not have a property interest in an appointment to a position as a police officer when his name was not placed on the eligibility list as a result of his inability to pass the psychological part of the hiring process?

4. Whether the court of appeals properly determined that respondents did not injure Puricelli's reputation when they disclosed information about his criminal record where Puricelli failed to establish a tangible injury?

5. Whether the court of appeals properly determined that issue preclusion did not bar a finding that Puricelli had no privacy interest in his prior criminal record?

LIST OF PARTIES

Petitioner in this action is Brian M. Puricelli. Respondents include the Borough of Morrisville; Harry Merker, Chief of Police, Borough of Morrisville; Township of Wrightstown; Walter Hughes, Jr., Chief of Police of Wrightstown Township; Alan M. Rubenstein, District Attorney of Bucks County, Pennsylvania; Office of the District Attorney; Dale Reichley, Assistant District Attorney; Edward Brosha, David Armitage, All individually and in their official capacity; Yardley Borough; Susan Taylor; Edward Robinson; Mayor Ken Cronlund; and, George Donat.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

BRIAN PURICELLI,

Petitioner

vs.

BOROUGH OF MORRISVILLE; HARRY MERKER; TOWNSHIP OF WRIGHTSTOWN; WALTER J. HUGHES JR.; KEN CRONLUND, GEORGE DONAT: YARDLEY BOROUGH, SUSAN TAYLOR, EDWARD ROBINSON, THE COUNTY OF BUCKS, OFFICE OF DISTRICT ATTORNEY, ALAN RUBENSTEIN, DALE REICHLEY; WILLIAM BROSHA AND DAVID ARMITAGE,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF JURISDICTION

Petitioner has invoked the jurisdiction of this Honorable Supreme Court pursuant to 28 U.S.C. § 1254(1).

On April 26, 1994, the United States Court of Appeals for the Third Circuit affirmed by way of memorandum opinion the decision of the United States District Court for the Eastern District of Pennsylvania

granting summary judgment to respondents Borough of Morrisville and Chief Harry Merker.

On July 25, 1994, petitioner filed a Petition for Certiorari which was rejected by this Honorable Court for failure to conform with Supreme Court Rule 14.

In August 1994, petitioner re-filed the Petition for Certiorari with a properly prepared Questions Presented section and cover page. The petition was thereafter accepted out of time by the Court as conforming with the Rules.

COUNTERSTATEMENT OF THE CASE

Petitioner Brian Puricelli filed four amended complaints in the United States District Court for the Eastern District of Pennsylvania against defendant-respondents the Borough of Morrisville and Chief Merker alleging various constitutional injuries. Puricelli's claims against Morrisville and Chief Merker were based upon his dismissal as a part-time police officer from the Borough's police force in 1984, the Borough's subsequent failure to hire him in 1988 as a full-time officer and Chief Merker's alleged dissemination of information regarding Puricelli's arrest, conviction and probation.

Puricelli's action was commenced under 42 U.S.C. §1983 and set forth various constitutional violations under the First, Fourth, Fifth, Eighth and Ninth and Fourteenth Amendments to the United States Constitution. Specifically, Puricelli asserted that his dismissal as a part-time police officer in 1984 resulted in the violation of his First Amendment and Fourteenth Amendment due process rights. Under his First Amendment claim, Puricelli asserted that Harry Merker, the Chief of Police for the Borough, threatened to fire and did fire him in 1984 for reporting criminal activity to the District Attorneys'

Office. Regarding his Fourteenth Amendment claim, Puricelli asserted that he was deprived of property without due process of law in that he was not provided with notice of all the charges against him nor an adequate opportunity to contest these charges before his dismissal in 1984 from his part-time position with the Borough.

Puricelli also asserted violations of his First Amendment and Fourteenth Amendment due process and equal protection rights as a result of the Borough's failure to hire him as a full-time officer in 1988. Pursuant to his complaint, Merker retaliated again in 1988 for Puricelli's asserted First Amendment activity of reporting officer criminal activity to the District Attorneys' Office. Further, Puricelli alleged that he was denied due process when the Borough failed to hire him in 1988 despite his alleged number one ranking in the eligibility pool. The Borough's failure to hire Puricelli in 1988 also formed the basis for his equal protection claim. Puricelli asserted that his equal protection rights were violated because the Borough treated him differently than other previously ranked number one candidates who were hired. Finally, Puricelli alleged that Chief Merker's alleged dissemination of information regarding his conviction and probation deprived him of a liberty interest in that he allegedly lost his status and his employment.[1]

On September 28, 1992, defendant-respondents Chief Merker and the Borough of Morrisville filed a Motion for Summary Judgment. Defendant-respondents

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[1] Puricelli also alleged violations of his Eighth and Ninth Amendment rights. However, Puricelli failed to pursue these in responding to defendant-appellees' Motion for Summary Judgement or on appeal.

argued that Puricelli's claims based on his dismissal from the Borough's force in 1984 were time barred. Further, defendant-respondents asserted that Puricelli's number one ranking on the eligibility list after the written part of the police officer's examination did not result in a property interest since Puricelli subsequently failed the psychological aspect of the test. Defendant-respondents also argued that his failure of the psychological test established that he was not similarly situated with other number one ranked candidates. This defeated his equal protection claim. Finally, defendant-respondents argued that Puricelli's claims based on Chief Merker's alleged dissemination of his criminal record were barred by the statute of limitation. Additionally, defendant-respondents argued that Puricelli failed to establish a liberty interest claim in the absence of any tangible loss.

On April 16, 1993, Judge Anita Brody granted defendant-respondents' motion (App. 32-69). However, Puricelli's claims of alleged violations of procedural due process under the Pennsylvania Police Tenure Act and the Pennsylvania Borough Code were placed in civil suspense pending Puricelli's exhaustion of the procedural remedies afforded under these provisions (App. 66-69). Thereafter, Puricelli filed a Motion for Reconsideration from Judge Brody's April 16, 1993 order alleging that he had suffered a tangible loss in support of his liberty interest claim and that he had a federally protected privacy right to keep information about his prior criminal record confidential. Further, Puricelli asserted that it was fruitless for him to pursue his claims in the administrative venue.

On September 7, 1993, Puricelli's Motion for Reconsideration was denied as untimely and because there was no clear error of law in the court's initial decision. (App. 7-18) Further, the district court removed Puricelli's

due process claims from suspense and dismissed the entire complaint. Thereafter, Puricelli appealed to the Third Circuit Court of Appeals.

On April 26, 1994, the Court of Appeals affirmed the award of summary judgment in defendant-respondents' favor (App. 1-4). The instant petition to this Honorable Court followed.

The facts underlying this action begin in 1979 when Puricelli sought employment as a police officer with the Borough of Morrisville. On February 22, 1979, Puricelli completed his application for employment with the Borough (App. 42A). In completing the application for employment, Puricelli stated that he had been convicted on a drug charge. Puricelli's application was turned over to Sgt. Potashnick to complete a background investigation. (App. 1-2A). Puricelli's fingerprints were taken, and a NCIC computer check indicated that Puricelli had been arrested in Texas for transporting 550 lbs. of marijuana. (App. 6-7A). A Federal Bureau of Investigation criminal records check was done on Puricelli. (App. 9A). The FBI criminal record received on August 18, 1979, indicated that plaintiff was arrested on July 19, 1976 for possession of marijuana with intent to deliver, that he was convicted and received three years probation. (App. 10A). Puricelli's federal probation officer intervened on his behalf with the Borough of Morrisville (App. 4-5A). The case was explained to Merker and he was told that Puricelli acted as an FBI informer (App. 4A). Puricelli was hired in July 1979 and he worked as a part-time officer up until his discharge in January of 1984. (App. 2A). Merker explained that he discharged Puricelli after receiving complaints about his performance and after he learned that he mislead authorities regarding his status as a police officer. (App. 15-18A). In order to attend wiretap

school, when his request to attend was denied by Chief Merker, Puricelli went to the Chief of Police of Tinicum Township and falsified his application. Although he was only working part-time with the Borough of Morrisville, Puricelli misrepresented his status as a full-time officer with Tinicum Township Police Department.

On April 14, 1983, Judge Hannum issued an order in which he denied a motion to expunge Puricelli's record; however Judge Hannum directed the Federal Bureau of Investigation to seal the criminal records developed in the case against Puricelli. The order also specifically provided that "the United States [was] not [to] disseminate these records to anyone, public or private..." Chief Merker was not a party to the action in which the order was entered. Though Puricelli stated that he served Chief Merker with a copy of the order, Chief Merker did not remember receiving a copy. While the order provided that the records associated with Puricelli's arrest were to be sealed, it did not purport to gag individuals not a party to the action.

After plaintiff was terminated by Morrisville in 1984, he immediately thereafter obtained employment with Wrightstown Township as a police officer. Subsequent to his employment with Wrightstown, plaintiff obtained another police officer position with Yardley Borough. While working for Yardley Borough, plaintiff was granted an educational leave of absence to attend law school at the Thomas Cooley Law School in Lansing, Michigan. Plaintiff graduated from Thomas Cooley Law School in 1991. On or about the end of April 1989 plaintiff returned from law school and returned to work at Yardley Borough. Plaintiff was suspended from Yardley after an incident with council person Susan Taylor. After plaintiff's

suspension with Yardley Borough, he got a job with the City Attorney's Office in East Lansing, Michigan.

Puricelli again applied for a position with the Borough of Morrisville in 1988. Puricelli ranked first after taking the Civil Service Exam. However, Puricelli failed to pass the psychological test given to those eligible for hiring. Puricelli admitted to suicidal tendencies, he thought about shooting himself, driving into a telephone pole or bridge abutment. As a result of the psychological test, Puricelli's name was removed from the list of eligible candidates.

SUMMARY OF THE ARGUMENT

The district court and the court of appeals properly determined that petitioner-Puricelli failed to present a viable claim for due process violations or violations of his liberty or privacy interests. Initially, Puricelli failed to preserve a number of issues for appellate review. Puricelli failed to conform to the rules governing the format and length of appellate briefs.

Substantively, Puricelli failed to establish a protected privacy interest in his criminal record nor did he establish a property interest subject to due process protection. In determining that Puricelli did not set forth any interests deserving of constitutional protection, the district court and court of appeals properly applied the controlling case law. Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972). Puricelli was unable to show a legitimate claim of entitlement to the benefit sought nor was he able to demonstrate that the disclosure of his criminal record foreclosed a range of opportunities to him.

REASONS FOR DENYING THE WRIT

I.

THE JUDGMENT OF THE DISTRICT COURT AND ITS AFFIRMANCE BY THE COURT OF APPEALS ARE IN ACCORD WITH THE DECISIONS OF THIS HONORABLE COURT.

Petitioner has misapplied decisions of this Court and the various court of appeals and Pennsylvania state courts in order to argue that the previous decisions rendered in this case are inconsistent with established case law. Petitioner asks the Court to create a novel application of the "stigma plus" standard so that he may attempt once again to recover.

A. A BRIEF FILED IN DISREGARD OF THE REQUIREMENTS OF THE APPELLATE RULES IS GROUNDS FOR DISMISSAL

In his appeal to the Third Circuit, Puricelli attempted to raise eleven issues for the court's review. However, eight of those issues were not included in his appellate brief but were incorporated by reference from a previous brief. Those eight issues mirror those which Puricelli now raises before this Honorable Court at number one through seven in his Issues Presented.

Reviewing Puricelli's claims, the Court of Appeals refused to consider those issues that were only raised and argued by way of incorporation. The Court of Appeals reasoned that to allow argument by incorporation would allow Puricelli to circumvent the Rules of Appellate Procedure.

Pursuant to Rule 28(g) of the appellate rules, "except by permission of the court, or as specified by local rule of the court appeals, principals briefs shall not exceed 50 pages . . ." F.R.A.P. 28(g); 28 U.S.C. (emphasis added). By incorporating his previous brief and its discussion of the eight other issues, Puricelli exceeded the 50 page limit. Further, Puricelli never sought permission from the court to exceed the limitation placed on the length of the brief.

It is well-established that violations of appellate rules limiting the length of each party's principal brief may result in the court's striking the brief sua sponte. Neeley v. Bankers' Trust Co. of Texas, 757 F.2d 621 (5th Cir. 1985). Failure of the appellant to comply with the appeal requirements regarding the filing of briefs is in itself sufficient to justify dismissal of the appeal. Stevens v. Security Pac. National Bank, C.A., 538 F.2d 1387 (9th Cir. 1976).

Puricelli does not address this issue in his petition. However, it was clearly within the court of appeals' discretion to dismiss those issues which were not included in the brief filed by Puricelli. Since Puricelli does not challenge the dismissal of these particular issues on procedural grounds, the Court of Appeals decision to dismiss them stands. Therefore, this Honorable Court does not have jurisdiction to entertain Puricelli's substantive challenge on these initial seven issues raised herein. Puricelli has waived consideration of these claims. Furthermore, no where in Puricelli's discussion of these issues is there any mention of Chief Merker or the Borough of Morrisville. Therefore, Puricelli has waived these issues as they relate to these respondents.

B. PURICELLI WAIVED HIS DUE PROCESS CAUSE OF ACTION STEMMING FROM HIS 1988 FAILURE TO HIRE CLAIM AND FAILED TO ESTABLISH A PROPERTY INTEREST SUBJECT TO DUE PROCESS PROTECTION.

In his complaint, the basis of Puricelli's due process claim asserted against the Borough of Morrisville and Chief Merker was the Borough's failure to hire Puricelli in 1988. Puricelli alleged that his number one ranking on the eligibility list gave him a property right in a position with the Borough's police department.

However, a review of Puricelli's appellate brief and his petition to this Honorable Court reveals that this issue of a due process violation in connection with Morrisville's failure to hire him in 1988 was not presented for appellate consideration. Therefore, it is waived and not subject to this Honorable Court's review. Simmons v. City of Philadelphia, 947 F.2d 1042, 1065 (3d Cir. 1991).

Even if it were subject to such review, undisputed facts and the case law establish that Puricelli did not have a property interest in a position with the Borough's police department. "Property interests are defined, not by the constitution, but by an independent source such as state law." Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Board of Regents v. Roth, 408 U.S. at 577.

In order to be considered a deprivation of "property" for due process purposes, there must be an entitlement to property not merely a chance of acquiring property;

contingent, uncertain interests are not recognizable as property for due process purposes. Yatvin v. Madison Metropolitan School District, 840 F.2d 412 (7th Cir. 1988)(emphasis added). Puricelli cannot demonstrate that he had a legitimate claim of entitlement to be hired by the Borough.

In Roe v. Comm. of Pennsylvania, 638 F.Supp. 929 (E.D. Pa. 1986), aff'd, 813 F.2d 398 (3rd Cir.), cert. denied, 483 U.S. 1021, 107 S.Ct. 3625 (1987), plaintiff's claim was based on her failure to be chosen for the Township's gifted education program. Plaintiff argued that she had a property interest, protected by the due process clause, in being in the class for gifted students. State regulations rendered plaintiff eligible for this class but did not guarantee her placement in the class. The Court held that because plaintiff could not be certain she would be selected for the class no matter what the selection process, the plaintiff had no legitimate claim of entitlement and therefore no property interest in the gifted education class. Roe, 638 F.Supp. at 930. See also: Yale Auto Parts vs. Johnson, 758 F.2d 54 (2d Cir. 1985).

In the present case, Puricelli's contingent interest in being considered for a position with the Borough cannot qualify as a legitimate claim of entitlement. Puricelli was not guaranteed a position. To the contrary, hiring decisions were necessarily a matter committed to the discretion of the Chief and the Borough Council. Therefore, his interest in being selected for a position was not the type of property interest contemplated by the due process clause.

It is well-established that where hiring decisions are based in part on the discretionary judgment of city officials, no property interest in the position exists. Anderson v. City of Philadelphia, 845 F.2d 1216 (3d Cir. 1988). Under the

Borough Code, hiring from the eligibility list is discretionary with the Borough from among those eligible. Coles v. Judd, 7 Pa. Cmwlth. 90, 298 A.2d 687 (1973). An applicant's name is not officially on the eligibility list for employment until the commissioners have had their chance to object. Appeal of Carlson, 152 Pa. Cmwlth. 285, 618 A.2d 1206 (1992). An individual has a protected property interest in having his or her name remain on an eligibility list but not in having his or her name placed on the list. Stana v. School Dist. of Pittsburgh, 775 F.2d 122 (3d Cir. 1985). Therefore, Puricelli did not have a property interest in an appointment to a position as a police officer. His name never made it to the eligibility list.

C. THE ALLEGED DISSEMINATION OF PURICELLI'S CRIMINAL RECORD DOES NOT GIVE RISE TO A CONSTITUTIONAL CLAIM NOR DID PURICELLI ESTABLISH A PROTECTED PRIVACY INTEREST IN HIS CRIMINAL HISTORY

Puricelli's liberty interest argument is based on the improper assumption that Pennsylvania law permits recovery for alleged reputation injuries alone under §1983. While he asserted that Chief Merker's alleged dissemination of information regarding his criminal conviction and subsequent probation resulted in a loss of status and employment, Puricelli failed to show that a range of opportunities was foreclosed to him as a result of the challenged activity.

To be actionable under §1983, injury to reputation must be coupled with a tangible loss such as the extinction of a vested right or the loss of employment. Defeo v. Sill, 810 F.Supp. 648, 656 (E.D. Pa. 1993). To successfully claim a deprivation of liberty, Puricelli was required to show that defendant published a charge against him so serious that it

would damage his standing in that community and the stigma of the charges foreclosed a range of opportunities to him. Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972). Defendant-respondents' challenged activity did not cause Puricelli to lose a property right or a status guaranteed by the constitution.

Despite Puricelli's arguments to the contrary, Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155 (1976) does not hold otherwise. In refusing to hold that an individual's reputation interest deserved due process protection under the liberty provisions of the due process clause, this Court stated that "the plaintiff's reputation interest is simply one of a number which the State may protect against injury by virtue of its tort law..." Paul, 424 U.S. at 712.

The Pennsylvania Supreme Court in discussing reputation rights stated that "[t]he redress provided under our body of substantive law is an action in tort for defamation." Sprague v. Walter, 518 Pa. 425, 543 A.2d 1078, 1084, (1988). Section 1983 was not intended to be a font of tort law. Recovery for reputation under Pennsylvania law is limited. Reputation injury alone is not actionable under §1983. Paul vs. Davis, 424 U.S. 693 (1976). Since Puricelli failed to satisfy the requirement that a range of opportunities be foreclosed to him, Puricelli has not demonstrated a loss of employment as a result of the challenged activity. Therefore, defendants were entitled to judgment in their favor.

Under his privacy interest claim, Puricelli sets forth a number of alleged violations of his right to privacy. Puricelli asserts that the various defendants violated his right to privacy when they revealed to each other, to the grand jury and to other community members that Puricelli was the target of a grand jury investigation, was running a "chop

shop", and that he was a drug smuggler with an arrest record. Further, Puricelli asserts that Chief Merker and the others disclosed information about his criminal conviction despite a court order sealing this record.

While the United States Constitution affords some level of protection to an individual's privacy, this protection is limited. Generally, the constitutional right to privacy consists of: (1) the right to be free of interference when making particular important decisions; and (2) the "interest in avoiding disclosure of personal matters." Jones/Seymour v. LeFebvre, 781 F.Supp. 355, 358, (E.D. Pa. 1991), aff'd 961 F.2d 1567 (3d Cir. 1992). This Honorable Court, in the decision of Whalen v. Roe, 429 U.S. 589, 598-600, 97 S.Ct. 869, 876-77, 51 L.Ed. 2d 74 (1977), held that the constitution includes and protects an individual's interest "in avoiding disclosure of personal matters" and "the interest in independence in making certain kinds of important decisions." However, these is no absolute right to protection against the disclosure of a personal matter. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 812 F.2d 105, 110 (3d Cir. 1987).

In Paul v. Davis, supra, this Honorable Court refused to recognize a privacy claim based upon the defendants' publication of plaintiff's arrest because "[n]one of our substantive privacy decisions hold this or anything like this, and we decline to enlarge them in this manner." 424 U.S. at 713. Additionally, this constitutional right to privacy may not be equated with the common law right to privacy recognized under Pennsylvania tort law. Jones/Seymour, 781 F.Supp. at 358.

D. PURICELLI FAILED TO ESTABLISH THE ELEMENTS NECESSARY TO THE APPLICATION OF ISSUE PRECLUSION

Finally, Puricelli argues that the trial judge was bound by previous orders of the federal court to determine that his due process and liberty interests were violated when his sealed criminal record was disclosed. However a review of the facts of this case establish that the elements of issue and claim preclusion are not satisfied. Claim preclusion gives dispositive effect to a prior judgment if the particular issue, albeit not litigated in the prior action, could have been raised. McNasby v. Crown, Cork & Seal Co., 888 F.2d 270 (3d Cir. 1989), cert denied, 494 U.S. 1066, 110 S.Ct. 1783 (1990). Issue preclusion bars re-litigation only of an issue identical to that adjudicated in the prior action. Gregory v. Chehi, 843 F.2d 111, 116 (3d Cir. 1988).

The prior federal rulings arose from complaints initiated by Puricelli. The due process and liberty interest claims were not raised previously and in the context of Puricelli's claims at that time could not have been. Therefore, Puricelli's res judicata and collateral estoppel arguments fail.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A - EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

Excerpts Chief Harry Merker's Testimony [Deposition pp. 16-17; 27; 31-33; 36-40]

A. Yes.

Q. That's what you are referring to at this point?

A. With one exception counselor, not all the records, a suit, a civil suit which is in the process in the Courts right now.

Q. This is not -- that has not been brought with you, is what you are saying?

A. No. That's the only thing that hasn't.

Q. What records are contained in the civil suit that is pending?

A. The information that was filed and served on Morrisville Borough and myself regarding a suit where Brian Puricelli is the plaintiff.

Q. So what you are saying, the only thing that you don't have with you is the legal Complaints that were filed by Mr. Puricelli, is that correct?

A. That's correct.

Q. Other than that you have all the records herein?

A. Yes. If I may retract. He applied in 1979.

Q. What month was that, do you know?

A. He was hired in July of 1979, the investigation application was prior to that, and the investigation was conducted by Sergeant Potashnick.

Q. Concerning the records that you brought with you, they are contained in three separate folders; is that correct?

A. That's correct.

* * *

Q. I'm showing you the files that you brought with you, now marked C-25-9, C-25-10 and C-25-11.

For the record, tell me what each of the files are generally?

A. C-25-9 is a file marked Puricelli, Brian, in which are correspondence, letters from the Federal Courts and an application for employment by Brian Puricelli, and a run down of his background from the State of Pennsylvania, and his references check, plus fingerprint cards which were taken which is normal routine when a man is being investigated for employment.

Q. And the other?

A. C-25-10.

Q. Which is marked, "Brian Puricelli. Confidential." Is this also Brian Puricelli's information and filed concerning him?

A. Yes.

Q. While at Morrisville Borough?

A. That's correct.

* * *

A. A federal probation officer was brought into my office by Sergeant Potashnick. And he explained that entire situation, and this is now when I found that it involved Texas; but however, he had a hearing before a federal judge in Philadelphia at a later date.

And he painted such a picture of this man being rehabilitated. He was effective in cooperation with the federal authorities, he acted more or less as an informant for the federal authorities and that he was convinced that this man was completely rehabilitated and would probably be an asset to any law enforcement department.

Q. Chief, I understand that that took place I believe by Federal Probation Officer Hippell, is that correct?

A. Yes.

Q. That took place in 1982. According to your records, if you refer to them. That's something like three years after he was hired?

A. Right.

Q. So for those three years you got no additional information as to substance of his conviction?

A. Not complete, no.

Q. So for those three years you got no additional information as to substance of his conviction?

A. Not complete, no.

Q. Is it fair to say that your department did nothing as far as investigating the answer that he gave and the interview that you had with him until 1982?

A. No. That's not correct.

* * *

fingerprint card, fingerprint card of Brian Puricelli, is that correct?

A. That's correct.

Q. This is the fingerprint card that you require of any applicant?

A. That's correct.

Q. Is there a date on that?

A. It's dated July 10, 1979, taken by Sergeant Potashnick.

Q. I notice right under the handwritten Saylor's piece of paper is another smaller piece of paper, it has notations on it; is that your handwriting?

A. Not entirely. The first part name, date of birth, social security number and chief is my handwriting; the rest of the handwriting is by Sergeant Potashnick.

Q. And Sergeant Potashnick's handwriting is in pen; is that correct?

A. That's correct.

Q. And it says arrested 7/19/76, possession of 550 pounds of marijuana?

A. Right.

Q. And it says Falfurrias, Texas, and what does it say below that?

A. Local address was 307 Miller Road, Mission, Texas. That is not my writing. It's the sergeant's.

Q. And then Sergeant Potashnick presumably advised you of this information?

A. That's correct.

Q. When did he advise you of this information?

A. After I asked Sergeant Potashick, which is one other notation in any handwriting, this is a sheet of sergeant Potashnick's NCIC. Brian Puricelli. This is where I signed it. This is what came back from the NCIC report.

Q. This would have been before you hired him?

A. No. Wait. This was after he was hired.

Q. Don't you do the NCIC check before you hire individuals as a police officer?

A. Yes.

Q. So don't you agree that was an NCIC check notation given by Sergeant Potashnick?

A. I presume it was.

Q. So the NCIC check that was done would have been done prior to hiring Brian Puricelli?

A. Yes. It possibly could.

Q. And the NCIC check noted that he had been arrested for 550 pounds of marijuana in Texas?

A. Yes.

Q. If he did that check, you knew that when you hired Brian Puricelli?

A. Yes.

Q. And now right below that notation I see a Federal Bureau of Investigation criminal record concerning Brian Puricelli?

A. That's correct.

Q. And that's what we know in the law enforcement as a rap sheet?

A. That's correct.

Q. And in paper clip, that is paper clipped to the same Saylor's note along with the note of his being arrested with 550 pounds of marijuana?

A. Yes.

Q. Is it fair to say they would have been paper clipped to, you have not changed the method in which everything has been paper clipped prior to coming here?

A. No.

Q. It is fair to say that it was done approximately the same time; is that correct?

A. That's correct.

Q. An on that statement it says Brian, it says Brian Puricelli on the Department of Justice Federal Bureau of Investigation criminal record, Brian Puricelli arrested 7/19/76, possession of marijuana with intent to deliver, and it indicates that he was convicted of such?

A. That's correct.

Q. And he received three years probation?

* * *

part-time police officer, did he at some point come forward to you and ask to be, to have you sponsor him or approve him for training to become certified in electronic wiretapping and surveillance pursuant to the Wiretap and Surveillance Act in Pennsylvania?

A. Yes. He asked to see me and presented me with application forms for certification and also application fingerprint cards to be accepted by the state police for wiretapping school.

Q. And you're aware that the law requires that his supervisor or his chief of police, in your instance, must approve his going to that school?

A. That's correct.

Q. As a matter of fact that is stated on the application, is it not?

A. Yes.

Q. Now, you have records here to indicate that he did come to you and ask to put him through this school or fund him as a police officer at Morrisville Borough to go to that school?

A. Yes.

Q. And those records are also contained in the file marked C-25-10; is that correct?

A. That's correct.

Q. Confidential file?

A. That's correct.

Q. And now, I see that you are looking at documents, can you describe what they are so that I have it for the record?

A. This is our paper stapled together. The top is my notes regarding what was in Puricelli's personnel file.

The second item is the fingerprinting card of an applicant which was taken on the 31st of March of 1981.

Q. An the application here is also one for electronics surveillance school?

A. That's correct. It is required, and it is the form that is supplied by the State Police Academy.

And the next are two copies of a Pennsylvania State Police application for certification of legal and technical aspects, wiretapping and electronic surveillance.

Q. Now, at some point did Brian Puricelli come to you with that application already filled out to the extent that it appears at the present time?

A. That's correct.

Q. And that date I believe was on April 6th, 1981?

A. It was -- it's April 6th of 1981.

Q. And what date did he fingerprint?

A. Finger printed March 31st of 1981.

Q. And that was for the purposes of going to that school?

A. That's correct.

Q. The notes that I see here is in your handwriting above that finger printed card, it that correct?

A. That's correct.

Q. And did you take those notes at the time he came to you and asked to go to the school?

A. Yeah, I did.

Q. And you stapled all three of the documents together?

A. That's correct.

Q. Now, did you advise Brian Puricelli directly that you would not sponsor him or authorize him to go to that school?

A. Yes, I did.

Q. And did you remember where that conversation took place?

A. It took place in my office.

Q. And did you make notes of that conversation?

A. Yes.

Q. And that's the note that appears there?

A. Yes.

Q. And can you tell me what those notes indicate?

A. The first item is the consensual, which means it was a consensual agreement between the state and the municipality to send the man to the school and the cost would be $250. And it was for a Class A type of instruction.

The Court authorized $500 for the tuition under a Class B.

My remarks to Brian Puricelli, and I so noted them, this would be of little use to this department in Morrisville.

We would have to go through the District Attorney for equipment and approval.

The District Attorney have enough personnel and equipment if needed. All the chief has to do is ask for it and the District Attorney men would then execute the use, expedite I guess, the uses of the equipment.

and I denied him and told him that I would not forward, or not sign the application and send it to the state police.

Q. And the application has remained with you ever since in the file?

A. Yes. It has. My name is there.

Q. Your name is there for certification but you never signed the application?

A. That's correct.

Q. But this is the application presented to you by Brian Puricelli?

A. Yes.

Q. Now, did you subsequently become aware that Brian Puricelli had taken this course?

A. Yes I did.

Q. Did you become aware of it prior to his entry into the course, or subsequent to his completion of the course?

A. After the completion of the course.

Q. So you had no information that he was actually attending the school?

A. No, I did not.

Q. Had you received any information at all from Chief Matthews concerning his attending the school prior to completion?

A. No.

Q. You do know who Chief Matthews is?

A. Yes. He is the Chief of Tinicum Township.

Q. And he was chief back at that time?

A. Yes.

Q. So it's fair to say that you never gave him permission to go to the school or to go to and ask the Tinicum Township police officer?

A. No. I did not.

Q. To your knowledge he was not employed as a Tinicum police officer in '81 and '82.

A. Not to the best of my knowledge, no.

Q. Did the police officers back in '81 and '82 have to disclose to you any employment other than what they had with Morrisville Borough Police Department?

A. Yes.

Excerpts of Affidavit of
James O'Neill, Police Supervisor,
Yardley Borough Testimony
[Affidavit pp. 5-8]

17. Upon questioning by Dale Reichley about the sealed information, I informed Mr. Reichley that he could not speak about that matter pursuant to court order. Mr. Reichley replied back "not even to the District Attorney's Office?" I replied yes.

18. On or about March 31, 1988, I did tell Brian Puricelli about Detective Brosha's two visits, the Detectives and Reichley statements and my Grand Jury testimony. But, I did not tell Brian Puricelli, until much after December 1990, that I have turned over to the District Attorney's Office, pursuant to the Grand Jury subpoena, the sealed information - which I had obtained from the federal source.

19. On or about May, 1988 while on duty, I received a phone call from Walter Hughes, Jr., who was then and is now known to me. Brian Puricelli was present for this call. I held the phone so Brian Puricelli could also hear Walter Hughes' statement. Hughes asked if I was going to suspend or fire Brian Puricelli. I asked why would I do this, saying further that "he (Brian Puricelli) is doing a fine job". Hughes replied, "Because of the Grand Jury investigation into the chop shop." I stated that I was not going to suspend or fire Brian Puricelli, and again asked why he was calling. Hughes replied, "He (Walter Hughes) could do nothing to Brian Puricelli so long as he (Brian Puricelli) was working for Yardley." I replied, "We were going to do nothing", and terminated the call.

20. On or about August 30, 1988, Brian Puricelli was granted by the Mayor of Yardley an Educational Leave of Absence to attend law school in Lansing, Michigan.

21. On or about November, 1988, Brian Puricelli was requested by the Bucks County District Attorney's Office to return to Bucks County and to testify in a criminal matter. Brian Puricelli did return.

22. On or about the end of April, 1989, Brian Puricelli returned from law school and by order of Mayor Edward Robinson, I was directed to place Brian Puricelli back on active duty and to place Brian Puricelli on full-time hours with no less than 40 hours per week. Brian Puricelli was present for this order, and I complied fully with the Mayor's order; placing Brian Puricelli in that status.

22. Prior to going on vacation (May, 1989) I issued an Order, which was approved by the Mayor, that while I was on vacation Brian Puricelli was to act in charge and control of the administrative duties of the department.

23. On or about May, 1989, I received a phone call while on duty. The call was from the Bucks County District Attorney's Office. Present for the call was Brian Puricelli and a third officer. The Assistant District Attorney who was calling at first did not identify himself, but upon my inquiry as to his name, he stated that he was David Zellis. Zellis inquired into the reason Brian Puricelli was working for Yardley Borough Police Department. I asked why he was asking. Zellis stated he was "calling and acting under direct authority and instructions of District Attorney Alan Rubenstein." I asked again why he was calling. Zellis stated "they, Alan Rubenstein and the District Attorney's Office" did not think Brian Puricelli should be working as a police officer. I replied that he would be unless I could be

given some reason why he should not be. Zellis could provide no reason for removal, so I terminated the call.

24. On or about June, 1989, while on duty and at Yardley Borough Police Headquarters, I was present, in the same room and within six to eight feet away, from Brian Puricelli, when Detective Brosha and a Pennsylvania State Police Officer named McAndrews, came to the Yardley Police Department and spoke with Brian Puricelli. The Trooper stated he was there to seize Brian Puricelli's Electronic Surveillance License. Brian turned the license over to the Trooper; although the Trooper, upon Brian Puricelli's request, had no papers authorizing seizure. Brian Puricelli asking the trooper if he thought he (Brian Puricelli) had done anything illegal in obtaining the license. The Trooper stated no, and if he had he would have obtained a warrant.

25. After the Trooper took the license, Detective Brosha approached Brian Puricelli and stated that Brian Puricelli "should not be in a police uniform", that Brian Puricelli was a habitual liar since 1979, and that Brian Puricelli was a criminal and convicted drug dealer. Brian Puricelli questioned the Detective and Trooper about the statements and I, at this time, ordered the Detective and Trooper to leave.

26. On or about July 11, 1989, while off duty and at home, and at approximately midnight, I received a telephone call to report to the Police Department. Upon arrival I discovered that Yardley Council Person Susan Taylor had been arrested. I requested Mayor Edward Robinson to come to the Police Department. I, as well as the Mayor, question Brian Puricelli, Joseph Cicolli and assisting Lower Makefield Township Police Officer Glen Hamilton about the arrest. All facts as given by these

Officers were the same, and upon Order of the Mayor, Brian Puricelli was instructed to charge Susan Taylor. Within a day or two, the Mayor stated that he was suspending the officers and directed that I so inform them that they were suspended.

27. Brian Puricelli and Officer Cicolli were both suspended; however, the Bucks County Detectives investigating the arrest related to me that they did not understand why the two officers were being suspended.

28. Brian Puricelli and his attorney did request a hearing; however, and despite no complaint ever being provided, or any charges ever being brought by either the Department or District Attorney's Office, no hearing was granted by Borough Council.

29. On or about February, 1991, Officer Cicolli was reinstated.

I, James O'Neill, having read the above do hereby swear and affirm that it is true and correct to the best of my information, knowledge and belief, and that I am aware that any intentional falsehood is punishable by law.

_____

Sgt. James O'Neill
Yardley Borough Police Department
56 S. Main Street
Yardley, PA 18977

Excerpts Brian Puricelli Testimony
[Deposition pp. 20-21; 52-58; 72]

Q. Is that a situation where you have to neither plead innocent nor guilty?

A. No, you enter a plea and a plea is set aside and it proceeds from that point on.

Q. So, you enter a plea of guilty and then you are sentenced to a period of probation?

A. That's correct.

MR. BOWE: I'll simply object and note that the characterization "sentenced" is a term of art under that statute. When he says sentenced, he's talking about disposition. That is probably different than technically what is meant by sentencing under that statute.

It is my understanding that no judgment of sentence is entered on the record.

MR. HANNA: I can accept that the statute says whatever it says. We'll have to look at it. We don't have it here.

BY MR. HANNA:

Q. In any event, you entered some type of plea, as you understand it. And then what was the disposition?

A. A probationary period. Upon successful completion of the probationary period all matters are sealed, expunged and set aside.

Q. How long was the period of probation?

A. It was three years. I finished it, I think, in two, maybe a little less.

Q. How could you finish it in two?

A. Well, there was a motion brought for early release. The government agreed with it. And I got off prior to the completion of the full term.

Q. So, your probation period was to be three years, but due to some papers that were filed during the course of that three-year period it was reduced to two?

A. Correct.

Q. So the record is perfectly clear, there was never anything like a trial in this particular matter?

A. That's correct.

Q. Now, who did Mr. Merker reveal this information to?

A. Members of the board. Thomas Herron I know for a fact.

Are we still stuck on just "while" or is "after" at this point?

Q. I am going to break it down so that my record is clear. I want to deal with the "while" first and the "after" second. And it probably would be just as easy if we did the "while" first and the "after" on each of those points together, rather than going down the "while" all of the way to the end and then coming back and redoing it.

* * *

referring to?

A. I'm not sure. I think it's either 42 or 18 U.S.C. 552 and in response to 12 (b)(6) that you filed, the numerous rules and regulations, as well as the statutes and the case law that I attached with the motion.

Q. Is it your contention that the information released by Mr. Merker caused you to lose any employment anywhere?

A. It's hard to say until I know everybody that he spoke with, until I speak with them. I believe it had partly to do with the county's investigation which caused me to lose employment in Wrightstown and in Yardley.

Q. I take your answer to mean that you're not sure at this time?

A. I'm not sure as to the extent, no.

Q. Nobody has come forward and told you that, for example, at Wrightstown you were terminated because of information that Harry Merker released?

A. No.

Q. Have you been employed while you've been going to law school?

A. Yes.

Q. As a police officer?

A. It's hard to tell. Yardley says I'm just suspended. I don't know if that constitutes employment still or what.

Q. When you've been going to law school you've been going to law school in Michigan?

A. That's correct.

Q. It's hard to work in Yardley and go to law school in Michigan.

A. The commute is difficult.

Q. The commute is difficult. While you've been out in Michigan have you been working in addition to law school or just incurring a big debt like a lot of people do when they go to law school?

A. I was employed.

Q. What types of jobs?

A. I was a legal intern for the city attorney's office.

Q. What city?

A. East Lansing.

Q. Did you hold that all of the way through law school?

A. No. I was diligent the first year, just paid attention to my studies, of course, coming back when I was asked to come back to testify in court.

Q. What I'm trying to do is make sure that I understand what jobs that you held when you were in law school.

A. The first year I held the Yardley job.

Q. In other words, you were technically an employee but you didn't actually work there?

A. Yeah. I came back during breaks, during call-backs and stuff like that.

Q. And then you stopped working at Yardley. Then did you take this other job as an intern?

A. Yes. I didn't stop. They suspended me.

Q. You can characterize it any way that you want to.

A. Well, I just want it to be clear. That's all.

Q. You were suspended by Yardley. I don't recall when that was, but you probably do.

A. July of '89.

Q. So, the job with East Lansing as a legal assistant or paralegal or whatever, that was subsequent to that date?

A. Correct.

Q. And have you fulfilled your course of employment in East Lansing? Are you done working there?

A. Oh, yes.

Q. Are you now taking like a bar review course?

A. That's correct.

Q. That's keeping you busy until the end of July?

A. Extremely.

Q. Now, you left the Borough of Morrisville in January of 1984. Apparently, you are seeking to go back to work for the Borough of Morrisville in '88?

A. That's correct.

Q. What position were you trying to get there?

A. Patrolman.

Q. In other words, basically your former job?

A. Well, since my former job had been terminated, I was looking to get the opening that they had created.

Q. When you use the term "terminated", did they cut back on the number of officers that they had on duty at the time?

A. No. In fact, they replaced me.

Q. So, in 1988 did you somehow reapply for the job?

A. Oh, yes.

Q. How did you do this? What were the mechanics of it?

A. Filed an application, took the Civil Service, went through the orals, went through the physicals, went through the psychologicals.

Q. But you contend that Harry Merker told the members of the council not to hire you?

A. That's correct.

Q. Now, Harry Merker, was he still employed by the borough at that time?

A. Yes, he was.

Q. So, he was still the police chief?

A. That's what he called himself.

Q. Fair enough. How do you know, referring to 19(b), that he told some members of the council not to hire you for the reasons ---

A. Members of the council told me.

Q. Specifically who said it to you?

A. Gail Jones.

Q. Anybody else.

A. That's it.

Q. Why would Merker have personal malice or grudges against you?

A. Because I named him as a defendant in a prior lawsuit.

Q. That the one that's still pending in Bucks County?

A. Correct.

Q. Turn to page 19. This is Count I. I don't have a lot of additional questions left. What does 38(a) refer to?

A. It refers to him accusing me of falsifying an application for wire tapping school and lying on my employment application.

Q. There must have been a question, then, on these applications pertaining to whether you had any prior arrests or convictions.

A. That's correct.

Q. So, he would have accused you of saying what with respect to those?

A. That I refused to disclose that information, that I answered no.

Q. With respect to the school applications, what application are you referring to there?

A. Electronic surveillance license.

Q. There was at a time when you were working for Yardley? I don't know what --

A. I don't understand your question.

Q. In 38(a) it says, "falsely accusing Plaintiff of criminal acts; including falsification of applications made on or about July of '88."

What applications did you make in July of 1988.

A. I think that that refers to the date when I found out about it.

Q. Do the applications that are mentioned here, do they relate back to applications that you made while you were at Morrisville.

A. Yes.

Q. In other words, the information that you learned in July of '88 pertains to matters that go back to '84 and earlier?

A. Yes.

Q. And the same thing, falsification of school applications, would that also pertain to your employment, your former employment at the borough?

A. Correct.

Q. What you refer to when you say that you first learned of these accusations, you just heard in 1989 that he had accused you of them?

A. Yes.

Q. Now, who did you speak to in June of 1989 that provided you with this information?

A. Mr. Brosha was one.

Q. So, what did Mr. Brosha tell you?

A. He said that I was a corrupt cop, that I was a compulsive liar and I shouldn't be a police officer, that I lied

on my school applications and my employment applications, that I was a convicted criminal.

* * *

Q. Now, do you know what your score was in 1988?

A. No. I know that I came out No. 1.

Q. You came out first?

A. Yes.

Q. How did you find that out?

A. Morrisville Civil Service told me.

Q. Did you ever have to appear in front of council in order to be interviewed for the position in 1988?

A. I don't recall. No.

Q. How many positions were open that year?

A. Oh, gee, I have no idea. A few. I don't know, three, four.

Q. And were you told that by the Civil Service commission.

A. Correct.

Q. And is it your position that Morrisville did not appoint you as an officer when you were the top person for the test in that year?

A. Yes.

Q. Is that your position?

A. Yes.

BOROUGH OF MORRISVILLE

FOR OFFICE USE ONLY	
Possible Work Locations	Possible Positions

APPLICATION FOR EMPLOYMENT

FOR OFFICE USE ONLY	
Work Location ____	Rate ____
Position ____	Date ____

(Please Print Plainly)

PERSONAL Date: 2/22/79

Name Puricelli (Last) Brian (First) M. (Middle Initial) Social Security No. 190-44-5146

Present address Box 186-A (No.) Upper River Rd. (Street) Washington Crossing, Pa (City, State) Telephone No. 493-5233

How long have you lived at above address? 2 months Are you a citizen? Yes

Previous address Box 264 (No.) Cox Ave (Street) Washington Crossing (City) Pa (State) How long did you live there? 9 yrs.

Date of birth 5/14/54 (Mo. Day Yr.) Sex M *** F ___ Height 5 ft. 6 in. Weight 170 lbs.

Marital Status: Single ☑ Engaged ☐ Married ☐ Separated ☐ Divorced ☐ Widowed ☐ Date of Marriage _

Number of dependents including yourself 1 Number of children 0 Their ages N/A

Do you have any physical defects? No If yes, describe _____

Have you had a major illness in the past 5 years? No If yes, describe _____

Have you received compensation for injuries? No If yes, describe _____

Position(s) applied for Patrolman Police Officer Rate of pay expected _____ per week

Would you work Full-time Yes Part-Time Yes Specify days and hours if part time Evening, weekends, holidays

Were you previously employed by us? No If yes, when? _____

List any friends or relatives working for us None

Name Relationship

None

Name Relationship

Were you ever arrested? Yes If yes, describe in full In a car not owned by me that had a controlled substance (Marihuana) in the trunk. Put on a special probation and on completion the conviction was expounged. Probation has been completed

If your application is considered favorably, on what date will you be available for work? one week after notice 19 _____

Person to be notified in case of accident or emergency

Grant Puricelli (Name) _____ (Address)

_____ (Phone Number)

Are there any other experiences, skills, or qualifications which you feel would especially fit you for work with the Township? Yes

I hold a certificate from the Pa. State Police Academy and other training in this field

Pa. Operator's Plate Number 16-733-714 Vehicle Registration No. 475-36U

The Civil Rights Act of 1964 prohibits discrimination in employment practices because of race, color, religion, sex or national origin. (Turn to Next Page)